

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

BRIAN LAFRANCE,

Plaintiff,

v.

KITSAP COUNTY, municipal corporation;  
JAMES H. HARRIS, in his individual  
capacity; CHIEF MIKE DAVIS, in his  
individual capacity; CHIEF DAVID WHITE,  
in his individual capacity; and CHIEF GARY  
SIMPSON, in his individual capacity,

Defendants.

Case No. C07-5347RBL

ORDER

THIS MATTER is before the Court on Defendants' Motion for Judgment on the Pleadings [Dkt. #14].<sup>1</sup>

Having considered the entirety of the records and file herein, the Court finds and rules as follows:

In the motion, defendants seek to bar this suit under the doctrines of issue preclusion and claim preclusion. For the first time in defendants' reply brief, they argue that this lawsuit is barred because plaintiff failed to assert his claim as a compulsory counterclaim pursuant to CR 13(a) in the Pierce County Superior Court action. (Plaintiff's Reply Brief, pp. 7-9, Dkt. #29). Ordinarily, courts will not consider arguments raised for the first time in a reply brief. *See Cedeno-Viera v. Ashcroft*, 324 F.3d 1062, 1066 n.5 (9<sup>th</sup> Cir. 2003). The Court, however, prefers to address all the issues presented which appear to have merit before

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<sup>1</sup>This motion was filed by Defendants Kitsap County, Mike Davis, David White, and Gary Simpson. Defendant James Harris joined in the motion [Dkt. #17].

1 ruling on the motion. Therefore, the plaintiff may file a surreply addressing only defendants' compulsory  
2 counterclaim argument. The surreply shall be filed within five (5) days of entry of this Order.

3 **IT IS SO ORDERED.**

4 The Clerk shall send uncertified copies of this order to all counsel of record, and to any party appearing  
5 pro se.

6 Dated this 14<sup>th</sup> day of November, 2007.

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9 RONALD B. LEIGHTON  
UNITED STATES DISTRICT JUDGE